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Summary record of the 2261st meeting
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Chairperson: Ms. Chanet
later: Mr. Glele Ahanhanzo
later: Ms. Chanet

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05-27355 (E)

The meeting was called to order at 3.05 p.m.

Consideration of reports submitted by States parties under article 40 of the Covenant and of country situations (*continued*)

Fourth periodic report of Mauritius
(CCPR/C/83/L/MUS and CCPR/C/MUS/2004/4)

1. *At the invitation of the Chairperson, the delegation of Mauritius took places at the Committee table.*

2. **Mr. Leung Shing** (Mauritius) reviewed the history of Mauritius since independence, stressing its commitment to the rule of law and the provision of social assistance to those in need, despite the challenges faced by its vulnerable economy.

3. The Government had introduced several reforms since submitting its fourth periodic report (CCPR/C/MUS/2004/4) to the Committee in May 2004. With a view to eradicating poverty and illiteracy, a pre-vocational class was provided in every secondary school, and the use of the children's mother tongue, Creole, was being introduced in primary schools in order to integrate more children into the educational process.

4. The office of the Ombudsperson for Children, established to promote and protect human rights, had issued its first annual report, to be circulated to the Committee subsequently, and a bill currently in Parliament was directed towards extending the powers of that office.

5. The Protection from Domestic Violence Act had been amended to cover all persons living in the same household, in addition to spouses and children. Similarly, the Government would introduce a bill in Parliament to provide further guarantees for the protection and welfare of the elderly, both through the courts and by imposing obligations on the relevant institutions. Additional facilities for the elderly were being provided and income-earning opportunities for them enhanced.

6. The Law Reform Commission had been restructured and had produced a final report on the establishment of a proposed family court. An Equal Opportunities Commission was being planned to help to remove any remaining gender inequality.

7. The Government was strongly committed to advancement of women's rights in both the public private sectors. There had been an increase in number of women in senior positions, especially in public sector. However, further progress was necess and could be achieved only through education.

8. General elections had been held regularly Mauritius, in accordance with its Constitution. proposed legislation would provide for the presenc international election observers.

9. The Prevention of Terrorism Act contai safeguards to protect the constitutional rights individuals and its provisions did not supersede authority of the courts. Since the adoption of the three years earlier, no one had been arrested prosecuted under its provisions.

10. The Data Protection Act sought to protect individual's right to privacy in the context of advan techniques of data collection, processing and storag

11. The Supreme Court of Mauritius upheld Constitution with respect to the separation of pow and afforded constitutional redress to aggrieved par in keeping with that principle, as seen in two re decisions involving preferential admissions to Ro Catholic schools and the granting of bail to pers charged with drug offences. In the second case, Government planned to appeal the decision to the P Council, which had upheld the Court's judgemen the first case.

12. **The Chairperson** invited the delegation address questions 1 to 16 on the list of iss (CCPR/C/83/L/MUS).

Constitutional and legal framework within which the Covenant and the Optional Protocol are implemente (article 2 of the Covenant)

13. **Mr. Boolell** (Mauritius), referring to questio said that specific measures to enforce rights under Covenant had not been deemed necessary, beca section 17 of the Constitution provided for enforcement of human rights, and the Supreme C could determine any contravention of such rig Moreover, the National Human Rights Commiss (NHRC) could investigate alleged violations and r matters to the appropriate body for action.

14. He also referred to the cases of *F. Fatmabe The State* and *Babeea v. The Queen* in which the co

had taken into account in their decisions article 14, paragraph 3 (d), and article 14, paragraph 3 (a), of the Covenant, respectively. In the first case, the court had found that the article of the Covenant, on provision of legal assistance in capital cases, did not apply, as the appellant had decided of his own volition not to be legally represented. In the second case, the court had found that the Covenant provision, on a person's right to be informed of the charges against him, did apply but was covered by the relevant article of the Constitution.

15. Referring to question 2, he said that in addition to the functions listed in paragraph 3 of the report, the NHRC could receive and inquire into complaints against members of the police force and could review factors impeding the enjoyment of human rights for all persons in Mauritius. If an inquiry found a violation of human rights or negligence in preventing such a violation, the matter was referred either to the Director of Public Prosecutions or to the appropriate service commission or public body for disciplinary action. The Commission could also recommend the granting of relief to the complainant and inform the complainant of any action taken.

16. Furthermore, many workshops had been held to increase public awareness of human rights issues and of Mauritius' obligations as a State party to international human rights instruments.

17. Mauritius had been criticized in the past because complaints against police officers were investigated by the police itself. Now a separate unit, the Complaints Investigation Bureau (CIB), had been set up. The Bureau was accountable to the NHRC, which ensured that investigations were conducted properly. Cases reported directly to the Commission could be referred to the Bureau for further inquiry. On completion, the Bureau forwarded the relevant file to the Commissioner of Police for disciplinary action or to the Director of Public Prosecutions. The Government's written replies included statistics on complaints to the Commission during the period 2001-2003, provisional figures for 2004 and a categorization of complaints in 2003. He drew attention, in particular, to three cases of alleged police brutality, of which one had been referred to the Director of Public Prosecutions, one had been settled through the conciliatory procedure and one had been dropped owing to lack of evidence.

18. For its party, the CIB had referred 64 cases, mostly relating to alleged police brutality, to the NHRC from 2001 to 2004. In one case, on the Commission's recommendation, the police had apologized and paid compensation to the complainants. The Commission's findings were made public in a report; the President presented each report to the National Assembly within a month of its submission.

19. Referring to question 3, he said that all the grounds on which discrimination was prohibited under articles 2 and 26 of the Covenant were covered by section 16 of the Constitution, except for language, non-political opinion and property. No measures had been taken to include those grounds; however, in response to the Committee's suggestions that comprehensive anti-discrimination laws should be introduced to cover all spheres protected by the Covenant, the Government had enacted the Sex Discrimination Act in 2002 and was finalizing the Equal Opportunities Bill.

20. Referring to question 4, he said that after the events of 11 September 2001, the Government had followed the rest of the world in taking stringent counter-terrorism measures. The Prevention of Terrorism Act was based on the counter-terrorism instruments to which Mauritius was a party and on counter-terrorism legislation in the United Kingdom, India and Singapore. Under the Act, terrorism offences were extraditable offences, and suspected terrorists could be denied entry into or transit through the country. He emphasized that the Act in no way superseded the jurisdiction of the courts, which could overrule any measure taken under the Act that was in breach of the Constitution. While the Act provided for incommunicado detention and denial of bail, based on similar provisions in the Dangerous Drugs Act 2000, there had been no reported cases of terrorist suspects being denied bail, held incommunicado for up to 36 hours without access to counsel, or denied asylum and extradited to countries where they might face human rights violations.

Gender equality and prohibition of discrimination (article 26 of the Covenant)

21. **Mr. Boolell** (Mauritius), referring to question 5, said that female employment had risen by 21 per cent from 1993 to 2003, as compared with only 8 per cent for men. However, women's occupational distribution had not changed significantly. While the percentage of

female legislators, senior officials and managers had increased, most women continued to be employed as clerks or machine operators. According to figures published in 2002, a significant number of senior positions in the public sector were held by women. The situation in the private sector was less encouraging, with women holding 12 per cent of executive positions in the textile sector, 8 per cent in the banking and insurance sector, only a few executive jobs in the construction sector and none at all in agriculture.

22. **Ms. Narain** (Mauritius), referring to question 6, said that the Sex Discrimination Division of the NHRC was responsible for receiving and investigating complaints of alleged infringements of the 2002 Sex Discrimination Act. Complaints triggered inquiries, efforts to reach a settlement by conciliation and recommendations to the relevant authorities. The Division dealt with discrimination and harassment on the grounds of sex, marital status, pregnancy and family responsibilities, in various fields. The Division sought, where possible, to resolve cases through conciliation; where that was not possible, and a complaint was substantiated, the Division referred the matter to the Director of Public Prosecutions, the Industrial Relations Commission or another body, recommended compensation, as appropriate, and informed the complainant of any action taken. The Division was also responsible for promoting understanding and acceptance of the Act and publishing guidelines on prevention of gender discrimination and sexual harassment. Statistics on the complaints received and the results of investigations were contained in the Government's written replies.

Violence against women and children, and prohibition of slavery and forced labour (articles 3, 7, 8 and 24 of the Covenant)

23. Referring to questions 7 and 8, **Ms. Narain** (Mauritius) said that the 1997 Protection from Domestic Violence Act allowed victims of domestic violence — which covered verbal as well as physical violence — to apply to the courts for various forms of protection. Following amendments to the Act in 2004, protection orders could now be sought by any person living under the same roof as the perpetrator and the courts could, subject to consent by both parties, order the parties to attend counselling sessions. The Act also provided for enforcement officers to investigate suspected cases of domestic violence and, where it was deemed that action should be taken, inf aggrieved spouse of his or her right to pr arrange transport to a safe place or hosp provide assistance in filing a complaint and c personal belongings. Failure to comply with order was an arrestable offence punishable by up to $1,000 and imprisonment for up to two y the period January to November 2004, the Mi Women's Rights, Child Development and Welfare had registered over 1,600 cases of abuse and 850 cases of verbal abuse, the vast of which concerned women.

24. The Ministry had set up a Family Welf composed of six regional family support responsible for handling all cases of domestic and six regional family protection police units collaborated closely with hospitals treating vi domestic violence and had set up two sexual wards. It also provided victims with legal where required, and financial assistance when left shelters, including referral to the Ministry Security.

25. For information on training received by th and prosecutors, she referred the members Committee to the Government's written replies.

26. **Mr. Boolell** (Mauritius), referring to que said that figures provided by the Child Deve Unit of the Ministry of Women's Rights, Development and Family Welfare did not nec support the claim that there was a high incid child abuse, prostitution or labour. The Gov nonetheless considered the matter to be o concern. Since the adoption of the Child Protect and the Ombudsperson for Children Act 200 campaigns and sex education courses in schools had improved awareness of children's Parents were more willing to report cases of or sexual abuse knowing that their child wo interviewed by trained staff and given the ne psychological support. The Child Developme worked closely with other agencies, includi police, to provide children at risk with a telephone hotline, free legal assistance psychological counselling. Other measures i drop-in centres for child victims of sexual abu Child Watch Network, the police force's Protection Brigade and the Ministry's action fight the commercial sexual exploitation of child

27. **Ms. Narain** (Mauritius), referring to question 10, said that the National Children's Council Act had come into force in 2004. The Council's functions were to advise the Minister on child welfare policy, identify areas for improvement, develop good practice, conduct research, and disseminate information on children's issues, ensure that public bodies took account of children's rights, assist children charged with a criminal offence, establish links between children's organizations in Mauritius and abroad, and perform such other functions as were conducive to its objectives. The Act also provided for the establishment of a National Children's Committee.

Right to life (article 6 of the Covenant)

28. In response to question 11, **Ms. Narain** (Mauritius) said that under section 235 of the Criminal Code, any person who procured or consented to use the means of procuring an abortion or facilitated or administered an abortion would be subject to imprisonment. The law did not currently provide for any circumstances under which women could legally resort to abortion. In 2001, however, a task force report had recommended repealing that section of the Criminal Code and replacing it by an Abortion Act which would make abortion lawful in certain circumstances. The report was still being considered by the Government.

29. *Mr. Glele Ahanhanzo (Vice-Chairperson) took the Chair.*

Right to be free from torture or cruel, inhuman or degrading treatment or punishment (articles 7, 9 and 10 of the Covenant)

30. **Mr. Boolell** (Mauritius), referring to question 12, said that the Dangerous Drugs Act 2000 had been enacted in response to the rising prevalence of dangerous drugs in the country. The Act distinguished between dealing in drugs, for which severe penalties were provided, and consuming drugs, where the emphasis was on rehabilitation. Under section 34 (2) of the Act, instead of sentencing a person convicted of using drugs to imprisonment, the Court could order that person to undergo treatment and rehabilitation for a period not exceeding three years, provided that he or she gave an undertaking to cooperate with a view to being cured of addiction. The Act had been amended in 2004 to allow for lighter sentences, such as conditional or absolute discharge, and remission on parole for drug consumers. Under the Act, any person arrested or detained for drug dealing would not be granted bail if that person had already been convicted of a drug offence or arrested or detained while on bail in relation to such an offence.

31. The Constitution had been amended for the mandatory denial of bail as provided in the Act; however, the Supreme Court had recently found those provisions to be in breach of the Constitution, as they infringed the concept of separation of powers. The Government had appealed against the Supreme Court's judgement and, pending a hearing by the Judicial Committee of the Privy Council, the country's highest court of appeal, the application of the relevant section of the Act had been suspended.

32. Lastly, he acknowledged that another section of the Act did allow suspects to be detained in police custody for up to 36 hours without access to any person other than a police or medical officer; however, suspects could be detained for such periods only in limited circumstances and a number of safeguards were provided. Any decision to detain a person incommunicado could be challenged on the grounds of constitutionality or unreasonableness by way of a judicial review.

33. The statistics on deaths in custody and the outcome of investigations, requested in question 13, had been supplied in the annexes to the delegation's written replies. It should also be noted that the Criminal Code had been amended to include provisions against torture and inhuman or degrading treatment. There were measures in place to prevent and punish torture and ill-treatment of detainees in prisons by law enforcement officers: a detainee could make urgent application for a court order of protection, the swift action taken in the recent *Maigrot* case being a case in point and proof of the effectiveness of that remedy. Complaints could also be made to the judge during a court hearing on extension of custody, or in writing to the judge, who could order an immediate inquiry; to the Board of Visitors established under the institutional reform legislation; to the National Human Rights Commission, which could call for an inquiry; or to the Complaints Investigation Bureau of the police force. When a detainee died in prison or in police custody, the district magistrate was legally empowered to carry out a very full investigation, in which all parties were summoned, a post-mortem was performed if necessary,

and a report was forwarded to the Director of Public Prosecutions.

34. With reference to question 14, no action had been taken on the recommendation in the Committee's previous concluding observations, because section 5 (1) (k) of the Constitution, to which it referred, was already a dead letter and was never invoked in practice.

35. **Ms. Narain** (Mauritius) concurred, noting that no relevant legislation ever referred to that constitutional provision, that section 5 (1) elsewhere provided for review of detentions by a specially appointed tribunal, and that section 5 (6) guaranteed the complete independence of the Commissioner of Police in ordering detentions.

36. **Mr. Boolell** (Mauritius) referred the Committee to the 2003 Annual Report of the National Human Rights Commission, which had just been circulated to members, for a full account of its investigation into the 2003 prison violence referred to in question 15, and for the Commission's recommendations. Pursuant to the report, a prison expert from the United Kingdom had been invited to Mauritius to conduct a seminar on the latest rehabilitation methods and, together with a Mauritian expert, to prepare a report on prison conditions in the country after visiting all the penal facilities. Their report commented favourably on the general sense of safety in the prisons and on the respectful treatment observed, but criticized the lack of opportunities for prisoners to improve themselves and engage in purposeful activity, the insufficient contact of prisoners with their families and their insufficient preparation for release, and it suggested pilot schemes to improve those situations. A United Kingdom expert had subsequently been appointed Commissioner of Prisons in Mauritius and had made detailed improvements, including a comprehensive drug strategy providing testing, counselling and treatment of prisoners; a significant expansion of educational, vocational and recreational activities in the prisons; the encouragement of family links; the development of a peer group counselling service to allow prisoners to assist each other in the rehabilitative process; and the institution of tighter security controls.

37. In answer to question 16, the Prime Minister's National AIDS Committee, set up to implement the HIV/AIDS action plan for drug users, had made it a priority to complete the drafting of a bill on HIV/AIDS preventive measures. There were approximately 2,500 prisoners in Mauritius, held in eight prisons, one set aside for juvenile offenders and another for women, and four of them high-security institutions. All detainees were tested for HIV and currently 300 were HIV-positive and were receiving medical care. The introduction of the new drugs strategy would offer more counselling and psychological assistance. The Prime Minister's Committee was also organizing public events for World AIDS Day.

38. **Mr. Amor**, welcoming the very rich documentation and full information which Mauritius had provided — a sign of its serious commitment to human rights and the Covenant — said that there had been palpable progress since the previous report and a steady development in safeguarding human rights. The status of the Covenant in the domestic legal system, however, needed clarification. It was unclear if it took precedence over the Constitution and domestic laws or even if it could actually be invoked by the courts. Also, the report and the delegation's comments were silent on articles 5, 11 and 13 of the Covenant, and it appeared that a provision of the Constitution that clearly violated article 9 of the Covenant had been allowed to stand — the fact that the provision was obsolete being, if anything, a further argument for abrogating it.

39. He had some doubts as to whether the composition of the National Human Rights Commission and the rules under which it operated faithfully followed the Paris Principles, the touchstone for all national institutions. There might also be some issues of sovereignty and of self-determination in connection with the Chagos archipelago issue.

40. The report gave no details of the anti-terrorism legislation and regulations adopted, and the delegation's replies had also been vague about whether, in the interests of security, some rights safeguarded under the Covenant had been disregarded. The human rights set out in the Covenant were basic and existed whether or not they had been legislated by a country.

41. Lastly, some of the Medical Council (Code of Practice) Regulations 2000 set out in the report were problematic because they could open the door to euthanasia, and it would be interesting to know if there were any procedural controls to prevent that from happening.

42. *Ms. Chanet (Chairperson) resumed the Chair.*

43. **Mr. Shearer** said he was pleased to learn that the main political parties had pledged to field more women in the coming elections. Also, since the Sex Discrimination Division of the National Human Rights Commission dealt also with discrimination in employment, he wondered if it had received any claims based on the principle of equal pay for equal work, or if such questions were to be resolved otherwise in Mauritius.

44. He hoped that before it drafted its concluding observations, the Committee would have statistics on the incidence of domestic violence against women and children, and on the number of protection orders requested and granted under the Protection from Domestic Violence Act of 1997. In a survey on domestic violence taken by a non-governmental organization (NGO), 84 per cent of the female subjects claimed to have suffered physical abuse. That alarming situation was perpetuated by women's dependency on their spouses in order to be able to provide for their children. On a related topic, he would appreciate information on measures currently being taken by the State party to achieve full compliance with the minimum standards for the elimination of trafficking in children.

45. He wondered whether forced and bonded child labour was still an issue and whether it occurred mainly in the agricultural sector. Were the statistics provided by the Child Development Unit of the Ministry of Women's Rights, Child Development and Family Welfare an accurate reflection of reality, particularly the figures for behavioural problems (452) and child labour (5)? Had some instances of bonded or forced child labour gone unreported? The State party's legislation regarding abortion was characteristic of the criminal legislation inherited from the British colonial era. Pending the completion of the lengthy formalities for enacting proposed revisions, were common-law exceptions being granted by the Director of Public Prosecutions?

46. **Mr. Rivas Posada** asked whether the State party had reached a decision on the constitutionality of the mandatory denial of bail under the Dangerous Drugs Act and expressed the Committee's continuing concern, despite the safeguards enumerated in the replies to the list of issues, over the practice of detaining suspects for 36 hours without access to legal counsel. The data provided on deaths in police cells did not fully address the Committee's questions concerning ill-treatment in prison and deaths resulting therefrom. What were the findings of investigations into such practices and what penalties had been imposed on those who perpetuated them?

47. The State party's assurances that sections 5 (1) (k) and 5 (4) of the Constitution were not being applied were not sufficient to allay the Committee's concerns regarding the implementation of previous Concluding Observations. The mere existence of those sections raised questions as to the compatibility of the Constitution with article 9 of the Covenant.

48. He welcomed the investigation into the incidents at Beau Bassin Prison, which should lead to overall improvements in prison conditions in Mauritius. It would be interesting to know more about the investigating team's recommendations and how they would be implemented, as well as their expected impact. He welcomed the State party's ambitious plan to draft legislation on preventing HIV/AIDS, which he hoped would be sufficiently broad.

49. **Mr. Bhagwati** asked whether the Mauritius Constitution truly covered all the provisions of the Covenant. He commended the judiciary for invoking the provisions of the Covenant to expand constitutional rights but felt that they should be directly enforceable in domestic law as well. He wondered whether Mauritius intended to discontinue the practice of referring cases to the Privy Council in London, which was, after all, a foreign entity in a country that had only recently adopted its own bill of rights.

50. He wished to know whether the National Human Rights Commission had the authority to issue final and binding rulings on violations of constitutional rights or whether its powers were limited to referring matters to the courts. In civil cases, could it charge the Government with violating basic human rights and order reparations to be made? He would appreciate additional information on the composition of the NHRC, the procedures for appointing members (was Parliament involved?) and the security of their tenure. Lastly, he asked the delegation to confirm whether associations for women only were barred under the Sex Discrimination Act 2002.

51. **Mr. Wieruszewski**, stressing the open-ended nature of article 26 of the Covenant, sought assurances that all aspects of discrimination were indeed covered by the Mauritian Constitution. He wondered whether the Sex Discrimination Act 2002 extended to

discrimination on grounds of sexual orientation. Did it prescribe affirmative action to prevent discrimination and address the impact of chronic discrimination of various kinds?

52. He enquired about the obstacles to enacting the abortion legislation proposed by a Task Force over three years earlier. Was political will lacking or was there some other reason for the inordinate delay? The Committee's general comments might be a useful tool in expediting adoption of the proposed Abortion Act. Like Mr. Shearer, he would be interested in knowing whether elements of the draft legislation had already been enacted in practice through case law decisions.

53. **Sir Nigel Rodley** asked whether the two-year time limit for filing complaints of police abuse was flexible in extremely grave cases. He, too, would be interested in knowing how the members of the National Human Rights Commission were appointed and whether it had investigatory powers or merely referred cases to the police or the Director of Public Prosecutions. How had the Supreme Court's judgement in the 2001 *Martine Desmarais* case been enforced? Had action been taken against the police officer? similarly, in the *Beau Bassin* case, the NHRC had issued a global condemnation but no findings against individual police officers, even though it had been approached by individuals whose human rights had been violated. Had the State party's legislation against torture ever been invoked against law enforcement officials?

54. He shared the concern of other Committee members over the vague definitions contained in the Prevention of Terrorism Act 2002 and their possible consequences. Lastly, he welcomed the provision on making videos of police interrogations during the 36-hour incommunicado detention period under the Dangerous Drugs Act and the Prevention of Terrorism Act. Perhaps it should be systematized and become applicable to all police interrogations.

The meeting rose at 6 p.m.